TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 251.

THE UNITED STATES EX REL. MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YEOMANS, CHARLES A. PROUTY, AND JOSEPH W. FIFER, INTERSTATE COMMERCE COMMISSIONERS, PLAINTIFFS IN ERROR,

vs.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED MAY 10, 1904.

(19342.)

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1 No. .

Supreme Court of the United States.

Transcript of record.

THE UNITED STATES, EX REL., MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company.
} No. 6605.

Law. Mandamus.

Error from the United States Circuit Court, Northern District of Ohio, Eastern Division.

John J. Sullivan, U. S. district attorney, Cleveland, O.;
L. A. Shaver, Washington, D. C., attorneys for plaintiff in error.
F. J. Jerome, Cleveland, Ohio, attorney for defendant in error.

2 UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF OHIO,
Eastern Division, ss.

Record of the proceedings of the circuit court of the United States within and for the eastern division of the northern district of Ohio, in the cause and matter hereinafter stated, the same being disposed of at a regular term of said court begun and held at the city of Cleveland, in said district, on the first Tuesday in February, being the 2nd day of said month in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America, to wit: On the 15th day of March, A. D. 1904.

Present: Honorable Francis J. Wing, United States district judge.

THE UNITED STATES, EX REL., MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILway Company.
} No. 6605. Law. Mandamus.

Said action was commenced on the 20th day of November, A. D. 1903, and proceeded to final disposition at the term and day above written, and during the progress thereof pleadings and papers were filed,

process was issued and returned, and orders of the court were made and entered in the order and on the dates hereinafter stated, to wit:

3 *Petition for mandamus.*

In the circuit court of the United States for the northern district of Ohio.

THE UNITED STATES, EX REL. MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,

vs.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILway Company.

To the honorable circuit court of the United States for the northern district of Ohio:

Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, and Joseph W. Fifer, the relators herein, acting in their capacity as members of the Interstate Commerce Commission, respectfully show:

I. That said Interstate Commerce Commission is a body duly created and organized under an act of Congress, entitled "An act to regulate commerce," approved February 4, 1887.

II. That the Lake Shore & Michigan Southern Railway Company, the respondent herein, is a corporation created under the laws of New York, Pennsylvania, Ohio, Michigan, Indiana, and Illinois, having its principal office at Cleveland, in the State of Ohio, in said district, and is engaged as a common carrier in the transportation by rail, or partly by rail and partly by water, of interstate commerce, and as such common carrier is subject to the provisions of said act to regulate commerce.

III. That by section 12 of said "act to regulate commerce" the Interstate Commerce Commission is "authorized and required to execute and
4 enforce the provisions" of said act, and is given "authority to inquire into the management of the business of all common carriers subject to" such provisions, and "to keep itself informed as to the manner and method in which the same is conducted," and "to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created;" and by section 20 of said act it is provided that the Commission is "authorized to require annual reports from all common carriers subject to the provisions of the act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information," and that "such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the matter of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries

paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business, and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet;" and that such reports "shall also contain such information in relation to rates or regulations concerning fares or freights or agreements, arrangements, or contracts with other common carriers, as the Commission may require."

IV. That under and in conformity with the authority so conferred, the Interstate Commerce Commission has, by an order duly made
5 dated the 3rd day of June, 1903, prescribed the manner and form in which such reports should be made and the contents thereof, and directed that each common carrier subject to the provisions of the "act to regulate commerce," should, "on or before the 15th day of September of each year," file with said Commission a report as so prescribed, "covering the twelve months terminating June 30 of said year," and that a copy of said order be served by mail on each of said common carriers by the secretary of said Commission. A copy of said order is hereto attached as Exhibit I and made a part hereof, and there is attached to said order as Exhibit A thereto and made a part thereof, the form and contents of the report so prescribed.

V. That in pursuance of said order the secretary of said Commission, on or about, to wit, the thirtieth (30th) day of June, 1903, served a copy of said order on the respondent herein, and also furnished said respondent the necessary blanks as prescribed in said order for making out such report for the year ending the thirtieth (30th) day of June, 1903, by mailing the same to R. H. Hill, the auditor of the respondent, at Cleveland, in the State of Ohio, that being the name and address of the officer of respondent designated by respondent as the officer to whom correspondence regarding such report should be addressed, and at the same time and in connection with such order and blanks for such reports, there was mailed to said officer a notice that said reports must be filed with the "Division of Statistics of the Interstate Commerce Commission not later than September 15th" thereafter, the day fixed as aforesaid by the order of the Commission.

VI. That respondent, the said Lake Shore & Michigan Southern Railway Company, failed and neglected to make out and return said report for the year ending June 30, 1903, on or before September 15th of said year, in full as required by the Commission in its said
6 order, Exhibit I hereto, and has not yet made out and returned the same in full, in that it failed to set forth in the report made and returned by it for said year the data or information called for on page 63–A of the form of report attached as Exhibit A to the order of the Commission, Exhibit I hereto, namely the tonnage, ton-mileage, earnings and receipts per ton per mile on grain, hay, cotton, live stock, dressed meats, anthracite coal, bituminous coal, and lumber carried in carload lots; and that said data or information required by the Commission to be given in said report by respondent is necessary to enable the Commission to perform the duties and carry out the objects for which it was created,

in the interest of the public, and that promptness by carriers in furnishing the same on or before the 15th day of September of each year, as required by the Commission, is essential for the purpose, among others, of enabling the Commission to make a full and complete annual report to Congress, which, by section 21 of said act to regulate commerce, is required to be transmitted to said body on or before December 1st of each year.

VIII. That there is no other adequate remedy in the premises than that aforded by the writ of mandamus, and petitioners therefore pray that a writ of mandamus be at once issued from this honorable court, directed to said Lake Shore & Michigan Southern Railway Company, commanding that a report for the year ending June 30, 1903, setting forth the omitted matters above named in Paragraph VI of this petition, as required by the Interstate Commerce Commission, be forthwith made out and filed with said Commission, and for such other orders as may seem to this honorable court proper and necessary.

THE INTERSTATE COMMERCE COMMISSION.
EDWARD A. MOSELEY,
The Secretary thereof, thereunto authorized.

7 [SEAL.]

JOHN J. SULLIVAN,
U. S. Attorney for Relator.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Edward A. Moseley, secretary of the Interstate Commerce Commission, being duly sworn, on his oath deposes and says that the several matters and things in the foregoing petition stated are true in substance and in matter of fact to the best of his knowledge, information, and belief.

EDWARD A. MOSELEY.

Sworn to and subscribed before me this the 18th day of November, 1903.

[SEAL.]

MARTIN S. DECKER,
Notary Public.

A true copy of the petition and exhibit.

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

(Interstate Commerce Commission seal.)

(Endorsements on petition for mandamus:) No. 6605. The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, vs. The Lake Shore & Michigan Southern Railway Co. Petition for mandamus. Filed Nov. 20, 1903. Irvin Belford, clerk U. S. circuit court, N. D. C.

8 EXHIBIT I, TO PETITION.

#6605.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3d day of June, A. D. 1903.

In the matter of annual reports under section 20 of the "act to regulate commerce."

It is ordered that each and all common carriers subject to the provisions of the "act to regulate commerce" shall make and file with this Commission, on or before the 15th day of September of each year, a report as provided in section 20 of the act to regulate commerce, covering the twelve months terminating June 30 of said year, and that said report shall be in the form of the blank report hereto attached as Exhibit A, and shall contain full and specific answers to all the questions propounded in said form of report and all the information called for therein, whether by questions or forms of tabular statements, or otherwise. In making said report the carrier shall also conform strictly to the instructions and directions set forth in said form of report.

It is further ordered, that each of such common carriers operating lines not wholly within the territorial limits of any one of the "groups" hereinafter set forth, but crossing such territorial limits and being in more than one of said "groups," shall, in addition to the report covering the operations of its entire line or lines, as called for above in Exhibit A hereto, and simultaneously with the making of said report, and for the same period of time, make a further or supplemental report in conformity with the blank form hereto attached as Exhibit B, covering the opertions, respectively, of the portions of its line or lines in each of said "groups," and this report shall contain full and specific answers to the questions propounded and all the information in any way called for in the said blank form, Exhibit B, hereto. The "groups" or territorial divisions referred to above are as follows:

GROUP I.—This group embraces the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

GROUP II.—This group embraces the States of New York, Pennsylvania, New Jersey, Delaware, and Maryland, exclusive of that portion of New York and Pennsylvania lying west of a line drawn from Buffalo to Pittsburg via Salamanca, and inclusive of that portion of West Virginia lying north of a line drawn from Parkersburg east to the boundary of Maryland.

GROUP III.—This group embraces the States of Ohio, Indiana, the southern peninsula of Michigan, and that portion of the States of New York and Pennsylvania lying west of a line drawn from Buffalo to Pittsburg via Salamanca.

GROUP IV.—This group embraces the States of Virginia, North Carolina, South Carolina, and that portion of the State of West Virginia lying south of a line drawn east from Parkersburg to the boundary of Maryland.

GROUP V. This group embraces the States of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, and that portion of Louisiana east of the Mississippi River.

GROUP VI. This group embraces the States of Illinois, Wisconsin, Iowa, Minnesota, the northern peninsula of the State of Michigan, and that portion of the States of North Dakota, South Dakota, and Missouri lying east of the Missouri River.

GROUP VII. This group embraces the States of Montana, Wyoming, Nebraska, that portion of North Dakota and South Dakota lying west of the Missouri River, and that portion of the State of Colorado lying north of a line drawn east and west through Denver.

GROUP VIII. This group embraces the States of Kansas, Arkansas, that portion of the State of Missouri lying south of the Missouri River, that portion of the State of Colorado lying south of a line drawn east and west through Denver, that portion of the State of Texas lying west of Oklahoma, and the Territory of Oklahoma, Indian Territory, and the portion of New Mexico lying northeast of Santa Fé.

GROUP IX. This group embraces the State of Louisiana, exclusive of the portion lying east of the Mississippi River, the State of Texas, exclusive of that portion lying west of Oklahoma, and the portion of New Mexico lying southeast of Santa Fé.

GROUP X. This group embraces the States of California, Nevada, Oregon, Idaho, Utah, Washington, the Territory of Arizona, and that portion of the Territory of New Mexico lying southwest of Santa Fé.

The statistician is authorized to make such deviations from the strict application of the boundaries of the several groups as above described as may appear reasonable in view of the peculiar conditions under which roads operate.

It is further ordered that a copy of this order shall be served, by mail, upon each of such common carriers, and the Secretary of the Commission is hereby directed to make such service.

By the Commission:

EDW. A. MOSELEY, *Secretary.*

Filed Nov. 20, 1903. Irvin Belford, clerk, U. S. circuit court, N. D. C.

* * * * * * *

10 *Motion for the allowance of alternative writ of mandamus upon the petition.*

In the circuit court of the United States for the northern district of Ohio.

THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, *vs.* THE LAKE SHORE & MICHIGAN SOUTHERN Ry. Company.	No. 6605. Motion.

The relator herein moves the court for the allowance of an alternate writ of mandamus against the defendant herein, upon the petition in this cause, as provided for by law.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio.

(Endorsements on motion:) No. 6605. Circuit court of United States, northern district of Ohio. The United States ex rel., etc., vs. The Lake Shore & Michigan Southern Railway Company. Motion. Filed Jan. 19, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O. John J. Sullivan, United States atty., N. D. O.

11 *Order setting down time for hearing application for mandamus.*

October term, A. D. 1903, to wit: January 19, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

In the circuit court of the United States for the northern district of Ohio.

THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILway Company. } No. 6605. Order.

The relator now making application for the allowance of writ of mandamus herein, the court orders that said application be set down for hearing on the twenty-third day of January, 1904, at 11-00 o'clock a. m. and that due notice of said time and place be given to the said defendant, together with a copy of the petition filed herein, at which said time the said defendant may then and there show cause why said writ should not be allowed.

12 *U. S. marshal's return of certified copy of order to show cause, etc.*

UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

U. S. marshal's return.

Received copies of writs in the above-entitled cause at Cleveland, Ohio, on January 19, 1904, and on the same day and place I served the same on the within-named The Lake Shore & Michigan Southern Railway Company by delivering a true and certified copy of each writ, with all endorsements thereon, to W. H. Marshal, general manager of said The Lake Shore & Michigan Southern Railway Company, the president, chairman of the board of directors or trustees, treasurer or other chief officer of said The Lake Shore & Michigan Southern Railway Company could not be found in my district.

F. M. CHANDLER, *U. S. Marshal.*

Fees:

Service (petition & exhibit)	$2.00
Travel do.	.06
Service (certified copy motion)	2.00
Travel do.	.06
Service (certified copy order)	2.00
Travel do.	$ .06
	$6.18

By P. D. SAMPSELL, *Deputy.*

(Endorsements, when returned:) U. S. circuit court, northern district of Ohio. Eastern division. No. 6605. United States vs. The Lake Shore & Michigan Southern Railway Company. U. S. marshal's return of certified copy of order to show cause, etc. Filed Jan. 21, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O.

13 *Hearing on order to show cause continued to February 2, 1904.*

October term, A. D. 1903, to wit, January 23, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

UNITED STATES, EX REL., ETC.,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY Company. } No. 6605. Law. Mandamus.

By consent of parties, the hearing on the order to show cause heretofore issued herein is continued until February 2, 1904.

14 *Motion to dismiss petition for writ of mandamus.*

Circuit court of the United States, northern district of Ohio. No. 6605. Law docket.

THE UNITED STATES, EX REL., MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YOEMANS, CHARLES A. PROUTY, JOSEPH W. FIFER, Interstate Commerce Commissioners,
v.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY Company.

Motion to dismiss petition for writ of mandamus.

And now comes the defendant, The Lake Shore & Michigan Southern Railway Company, and without waiving any right to answer to the merits or to plead further, respectfully moves that the aforesaid petition for writ of mandamus be dismissed on the ground that this honorable court has no original jurisdiction to issue a writ of mandamus as prayed for by the relators.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,
By F. J. JEROME, *Attorney.*

(Endorsements on motion to dismiss petition for writ of mandamus:) No. 6605. In U. S. C. C. N. D. of Ohio, E. D. United States, ex rel., etc., vs. L. S. & M. S. Ry. Co. Motion to dismiss petition for writ of mandamus. Filed Jan. 28, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O.

15 *Motion to dismiss petition for mandamus taken under advisement.*

February term, A. D. 1904, to wit, February 24th, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

THE UNITED STATES, EX REL., ETC.,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN Railway Co. } No. 6605. Mandamus.

This day this cause came on to be heard on the motion of defendant to dismiss the petition for mandamus heretofore filed herein by plaintiff, and was argued by counsel and taken under advisement by the court.

16 *Motion to dismiss granted; petition dismissed; leave to file bill of exceptions within 60 days.*

February term, A. D. 1904, to wit, March 15, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

UNITED STATES EX REL. MARTIN A. Knapp et al.
vs.
THE LAKE SHORE & MICHIGAN Southern Railway Company. } No. 6605. Law. Mandamus.

This cause having been heard and submitted to the court on a previous day of the present term on the motion of defendant to dismiss same for want of jurisdiction, it is now ordered by the court, on consideration thereof, and being fully advised in the premises, that said motion be, and the same is hereby, granted and said petition dismissed at costs of petitioners; to which ruling of the court the petitioners, by its attorneys, then and there excepted, and 60 days is given for allowance and filing of bill of exceptions.

17 *Certificate of judge.*

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff, *vs.* THE LAKE SHORE & MICHIGAN SOUTHERN Railway Company, defendant.	Certificate of judge that a question of jurisdiction is in issue, under sec. 5 of the act of March 3, 1891.

In this cause I hereby certify that the judgment and order of dismissal of the petition of the plaintiff herein is based solely on the ground that the cause set forth in the petition, in my opinion, is not one of which the circuit court of the United States has any jurisdiction; and that treating the motion to dismiss petition for writ of mandamus, filed January 28th, 1904, as presenting this question of jurisdiction, and acting also independently of the motion, and on the court's own motion, the suit is dismissed only for the reason above stated; that is, that there is no jurisdiction of the circuit court of the United States regarding the controversy.

This certificate is made conformably to act of Congress of March 3rd, 1891, chapter 517, and the order and judgment of the court filed and entered herein is made a part of the record and will be certified and sent up as a part of the proceedings, together with this certificate.

FRANCIS J. WING,
District Judge, holding the Circuit Court of the United States for the Northern District of Ohio.

18 (Endorsements on certificate of judge:) No. 6605. In the circuit court of the United States for the northern district of Ohio, eastern division. The United States, ex rel., Martin A. Knapp et al., vs. The Lake Shore & Michigan Southern Railway Co. Certificate of judge. Filed April 1, 1904. Irvin Belford, clerk. U. S. circuit court, N. D. O.

19 *Order of continuance.*

February term, A. D. 1904, to wit: April 4, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

THE UNITED STATES EX REL., ETC., *vs.* THE L. S. & M. S. RY. CO.	No. 6605. Law. Mandamus.

This cause is continued to the next term of this court.

20 *Petition for writ of error.*

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff, *vs.* THE LAKE SHORE & MICHIGAN SOUTHERN RAILway Company, defendant.	At law. Petition for writ of error.

Now comes the United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff herein, and says:

That on or about the fifteenth day of March, A. D. 1904, the circuit court entered a judgment herein in favor of the defendant, and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio,
Attorney for Plaintiff.

21 (Endorsements on petition for writ of error:) No. 6605. In the circuit court of the United States, for the northern district of Ohio, eastern division. The United States ex rel. Martin A. Knapp, et al., vs. The Lake Shore & Michigan Southern Railway Co. Petition for writ of error. Filed April 14, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O. John J. Sullivan, U. S. attorney.

22

Assignment of error.

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN Railway Company, defendant.
} Assignment of error.

The plaintiff in this cause, in connection with the petition for writ of error, makes the following assignment of error, which it avers occurred on the trial of the cause, to wit:

The court erred in granting the motion filed by the defendant to dismiss the petition for writ of mandamus, which motion was as follows:

"Circuit court of the United States, northern district of Ohio.

"THE UNITED STATES EX REL. MARTIN A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
v.
THE LAKE SHORE & MICHIGAN SOUTHERN Railway Company.
} No. 6605. Law. Docket.

"Motion to dismiss petition for writ of mandamus.

"And now comes the defendant, the Lake Shore & Michigan Southern Railway Company, and without waiving any right to answer to
23 the merits or to plead further, respectfully moves that the aforesaid petition for writ of mandamus be dismissed on the ground that this honorable court has no original jurisdiction to issue a writ of mandamus as prayed for by the relators.

"THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,
"By F. J. JEROME, *Attorney.*"

and in dismissing the said petition of the plaintiff, and in rendering judgment against the plaintiff.

Wherefore the plaintiff prays that the judgment of the said circuit court be reversed.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio,
Attorney for Plaintiff.

(Endorsements on assignment of error:) No. 6605. In the circuit court of the United States for the northern district of Ohio, eastern division. The United States ex rel. Martin A. Knapp, et al., vs. The Lake Shore & Michigan Southern Railway Co. Assignment of error. Filed, April 14, 1904. Irvin Belford, clerk U. S. circuit court, N. D. O. John J. Sullivan, U. S. attorney.

24 *Order allowing writ of error.*

April term, A. D. 1904, to wit, April 14th, 1904. Present: Honorable Francis J. Wing, U. S. district judge.

THE UNITED STATES EX REL. MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YEOMANS, CHARLES A. PROUTY, JOSEPH W. FIFER, Interstate Commerce Commissioners, plaintiff.
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, defendant.
} No. 6605. Law.

This 14th day of April, A. D. 1904, comes the plaintiff, by John J. Sullivan, United States attorney for the northern district of Ohio, its attorney, and files herein and presents to the court its petition, praying for the allowance of a writ of error, and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error.

25 *Writ of error.*

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. KNAPP, JUDSON C. CLEMENTS, JAMES D. YEOMANS, CHARLES A. PROUTY, JOSEPH W. FIFER, Interstate Commerce Commissioners, plaintiff.
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, defendant.
} Writ of error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the circuit court of the United States for the northern district of Ohio, eastern division, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between the United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, plaintiff, and The Lake Shore & Michigan Southern Railway Company, defendant, a manifest error has happened, to the great damage of the said The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, as by its

complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein
26 given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 14th day of May next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of April, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundredth and twenty-eighth.

[SEAL.]

IRVIN BELFORD,
Clerk of the Circuit Court of the United States
for the Northern District of Ohio,
By B. C. MILLER, *Deputy Clerk.*

Allowed by—

FRANCIS J. WING,
District Judge, holding the Circuit Court of the United States
for the Northern District of Ohio.

26½ United States circuit court, northern district of Ohio.

In the pursuance of the command of the within writ of error, I, Irvin Belford, clerk of the United States circuit court within and for said northern district of Ohio and the eastern division thereof, do herewith transmit under the seal of said court a true, full, and complete copy of the record and proceedings of said court in the cause and matter in said writ of error stated, together with all things concerning the same, to the Supreme Court of the United States, together with said writ of error and the citation to said defendant in error.

Witness my official signature and the seal of said court at Cleveland, O., in said district, this 21st day of April, A. D. 1904, and in the 128th year of the Independence of the United States of America.

[SEAL.]

IRVIN BELFORD, *Clerk,*
By B. C. MILLER, *Deputy Clerk.*

(Indorsed: Filed Apr. 21, 1904. Irvin Belford, clerk, U. S. circuit court, N. D. O.)

27 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Lake Shore & Michigan Southern Railway Company, greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of

Washington on the 14th day of May next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Ohio, wherein The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 14th day of April, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty-eighth.

FRANCIS J. WING, *Judge.*

27½ *U. S. Marshal's return.*

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

Received this citation at Cleveland, Ohio, on April 14th, 1904, and on the same day at the same place, I served the same on the within-named defendant in error The Lake Shore & Michigan Southern Railway Company by handing a true and certified copy hereof with all endorsements thereon to W. H. Marshall, general manager of said defendant in error The Lake Shore & Michigan Southern Railway Company, the president, chairman of the board of directors or trustees, cashier, secretary, treasurer, or other chief officer of said company could not be found within my district.

F. M. CHANDLER, *U. S. Marshal.*
By P. D. SAMPSELL, *Deputy.*

Fees:

Service.....	$2.00
Travel	.06
Total	2.06

28 *Certificate of clerk.*

In the circuit court of the United States for the northern district of Ohio, eastern division.

THE UNITED STATES EX REL. MARTIN A. KNAPP, Judson C. Clements, James D. Yeomans, Charles A. Prouty, Joseph W. Fifer, Interstate Commerce Commissioners,
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company.
No. 6605. Law. Mandamus.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify that the annexed and foregoing pages

contained a full and true copy of the final record, petition for writ of error, assignment of errors and all proceedings in said cause; and there is embraced in said record, a true copy of the certificate of the court in said cause, the originals of all of which are now in my custody as clerk of said court. Also the writ of error and citation issued and allowed in this cause are annexed to and transmitted with said record.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Cleveland, Ohio, in said district, on this 28th day of April, A. D. 1900, and of the 128th year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk U. S. Circuit Court N. D. O.*,
By B. C. MILLER, *Deputy Clerk.*

29 Supreme Court of the United States, October term, 1903.

THE UNITED STATES EX REL. MARTIN A. Knapp et al., Interstate Commerce Commissioners, plaintiff in error,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN Ry. Co.
} No. 691.

Stipulation.

It is hereby stipulated by counsel for the parties to the above-entitled cause that in the printing of the transcript of the record therein, "Exhibit A to Exhibit 1, to petition, form of report," being blank form of annual report to the Interstate Commerce Commission of the United States for the year ending June 30, 1903, appearing at page 9 et seq. of said transcript, shall be omitted by the clerk; and that in lieu thereof twenty-five copies of said form, as it appears in said record, shall be filed with the clerk for the use of the court in the consideration of the cause.

H. M. HOYT,
Solicitor-General.
GEO. C. GREENE,
Counsel for Defendant in Error.

30 (Indorsed:) File No. 19342. Supreme Court U. S. October term, 1903. Term No., 691. The United States ex rel. Martin A. Knapp et al., Interstate Commerce Commissioners, P. E., vs. The Lake Shore & Michigan Southern Railway Company. Stipulation omitting part of record in printing. Filed May 20th, 1904.

(Indorsement on cover:) File No. 19342. N. Ohio C. C. U. S. Term No., 251. The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yeomans, Charles A. Prouty & Joseph W. Fifer, Interstate Commerce Commissioners, plaintiffs in error, vs. The Lake Shore and Michigan Southern Railway Company. Filed May 10th, 1904. File No., 19342.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, EX REL. MARTIN A. Knapp et al., Interstate Commerce Commissioners, plaintiff in error,
v.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company.
No. 251.

MOTION TO ADVANCE.

The Solicitor-General, at the request and on behalf of the plaintiff in error in the above-entitled cause, respectfully moves the court to advance the same on the docket, on the following grounds:

The case is a petition in the name of the United States on the relation of Martin A. Knapp et al., Interstate Commerce Commissioners, to the Circuit Court of the United States for the Northern District of Ohio for mandamus to compel the Lake Shore and Michigan Southern Railway Company to file an annual report with the Interstate Commerce Commission, as provided by section 20 of the Act to Regulate Commerce. Said Circuit Court dismissed the petition on the ground of want of jurisdiction, and the case is in this court on writ of error.

16006—05

The annual reports required by the law to be made to the Interstate Commerce Commission are necessary to enable the Commission to discharge its duties in enforcing the provisions of the Act to Regulate Commerce, and particularly in making its annual report to Congress, as required by section 21 of that act.

Not only has the Lake Shore and Michigan Southern Railway Company refused to make out and file its report under section 20 of said act, but a number of other railway companies have also refused to make out and file such report. Petitions for mandamus to compel other carriers to comply with the law have been filed in the Circuit Court of the United States for the District of Massachusetts and in the Circuit Court of the United States for the Southern District of New York, and proceedings on those petitions have been suspended by said courts to await the decision of this court in the present case.

As the lower court dismissed the petition upon the ground of want of jurisdiction, the plaintiff in error is willing to submit the case to this court upon printed briefs under the thirty-second rule. Opposing counsel, however, decline to consent thereto.

Notice of this motion has been served upon opposing counsel and proof of service thereof filed with the clerk.

HENRY M. HOYT,
Solicitor-General.

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FILE COPY.

Office Supreme Court U. S.
FILED
JAN 16 1905
JAMES H. McKENNEY,
Clerk.

In the

Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, EX REL. MARTIN A. KNAPP et al., Interstate Commerce Commissioners, plaintiff in error,
v.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

No. 251.

SUGGESTIONS IN ANSWER TO MOTION TO ADVANCE.

The defendant in error begs leave to submit in answer to the motion of the Solicitor-General to advance this cause the following:

The statement in the motion to advance that the defendant company refused to make out and file its report under section 20 of said Act (the Act to Regulate Commerce) is not according to the fact, nor as is set forth in the record in this cause at page 2.

The defendant company did, as appears by the petition herein (paragraph VI), make and file with the Commission its report under said section 20, but only

failed to set forth certain data or information called for on page 63 A of the form of report furnished by the Commission, "Namely, the tonnage, ton mileage, earnings and receipts per ton per mile on grain, cotton, live stock, dressed meats, anthracite coal, bituminous coal and lumber carried in carload lots." In all other respects its said report, which contained 85 pages, was made as requested or required by the Commission. And said omitted matter is all that is sought to be obtained in this suit.

The defendant respectfully submits that the information called for on said page 63 A is not "necessary to enable the Commission to discharge its duties."

GEO. C. GREENE,
Of Counsel for Defendant in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES ex rel. MARTIN A. KNAPP et al., Interstate Commerce Commissioners, plaintiff in error,

vs.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, defendant in error.

No. 261.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES EX REL. MARTIN A. KNAPP et al., Interstate Commerce Commissioners, plaintiff in error.
v.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, defendant in error.
} No. 251.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

In this case the jurisdiction of the circuit court is in issue and that question alone has been certified for determination. (R., 10.)

In due season the Interstate Commerce Commission ordered the Lake Shore and Michigan Southern Railway Company to make a report on or before the 15th of September, 1903, in the manner and form theretofore prescribed, for the year ending June 30. (R., 3.)

The railroad company failed to fully report the data or information called for, and especially to show the

tonnage, ton mileage, earnings, and receipts per ton per mile, on grain, hay, cotton, live stock, dressed meats, anthracite coal, bituminous coal, and lumber, carried in car-load lots, all of which information the commission deemed necessary to enable it to perform its duties and carry out the objects for which it was created. (R., 3)

On November 20, 1903, a petition was filed in the name of the United States upon the relation of the members of the Interstate Commerce Commission against the defendant railway, a corporation under the laws of Ohio and other States, in the circuit court of the United States for the northern district of Ohio, where the principal office of the company was located. (R., 3.)

The petition prayed that a writ of mandamus be at once issued commanding the company to make a report for the year ending June 30, 1903, setting forth the matters asked for by the Commission, but omitted from the report theretofore filed. (R., 4.)

The defendant appeared and moved that the petition be dismissed because the court had no original jurisdiction to issue a writ of mandamus as prayed for. (R., 8.) The motion was granted and the petition dismissed. (R., 9.)

The judge certified that the order of dismissal was based solely on the ground that the court had no jurisdiction. (R., 10.)

A writ of error was sued out and the cause brought here.

The act to regulate commerce, approved February 4, 1887 (24 Stat., 379), as amended by an act approved March 2, 1889 (25 Stat., 855), and by an act approved February 10, 1891 (26 Stat., 743), and by an act approved February 8, 1895 (28 Stat., 643), provides:

> SEC. 12. (As amended March 2, 1889, and February 10, 1891.) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production

of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. * * *

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts, and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees, and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes

of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

ARGUMENT.

I.

It is submitted that under the act of March 3, 1887 (24 Stat., 552), which defined the jurisdiction of circuit courts of the United States, and other similar acts passed prior thereto, a circuit court has jurisdiction of an original proceeding seeking relief by mandamus.

This proposition is undoubtedly out of harmony with the opinions of this court in a number of cases arising under the judiciary act of 1789 (1 Stat., 73) and the act of 1875 (18 Stat., 470).

McIntire v. *Wood*, 7 Cranch, 504.

McClung v. *Silliman*, 6 Wheat., 598.

Bath County v. *Amy*, 13 Wall., 245.

Graham v. *Norton*, 15 Wall., 427.

County of Greene v. *Daniel*, 102 U. S., 187, 195.

United States v. *Schurz*, 102 U. S., 378, 393.

Davenport v. *County of Dodge*, 105 U. S., 237, 242, 243.

Louisiana v. *Jumel*, 107 U. S., 711, 727.

Smith v. *Bourbon County*, 127 U. S., 105, 112.

High on Extraordinary Legal Remedies, secs. 589, 590.

Mystic Milling Co. v. *Chicago, M. & St. P. Railway Co. et al.*, 132 Fed. Rep., 289.

We do not find the question has been directly passed upon by this court in any case which arose since the act of March 3, 1887, defined the jurisdiction of United States courts. That act repealed all laws and parts of laws in conflict with its provisions.

The cases which deny to a circuit court the right to grant a mandamus in an original proceding hold that section 716, Revised Statutes—originally section 14, judiciary act, 1789—giving United States courts power to issue all writs not otherwise specially provided which may be necessary for the exercise of jurisdiction and agreeable to the principles and usages of law operates to prevent the issuing of a writ of mandamus except in aid of a jurisdiction previously acquired. The result of such holding and the reasons in opposition are set forth with great force in the dissenting opinion of Mr. Justice Bradley in *Rosenbaum* v. *Bauer* (120 U. S., 459).

We respectfully suggest, in view of the modern development of proceedings by mandamus and the very great importance of the remedy thereby, that the enforcement of the laws of the United States and the public interest would be advanced if this court would refuse to be bound by the decisions under earlier statutes and hold that under the ones now in force the circuit court has authority to entertain an original proceeding seeking a remedy by mandamus.

Hartman v. *Greenhow* (102 U. S., 672, 675).

A mandamus in cases of this kind is no longer regarded in this country as a mere pre-

rogative writ. It is nothing more than an ordinary proceeding or action in which the performance of a specific duty, by which the rights of the petitioner are affected, is sought to be enforced. Says Mr. Chief Justice Taney: "It undoubtedly came into use by virtue of prerogative power in the English Crown, and was subject to regulations and rules which have long since been disused; but the right to the writ and the power to issue it have ceased to depend upon any prerogative power, and it is now regarded as an ordinary process in cases to which it is applicable. It was so held by this court in the cases of *Kendall* v. *The United States*, 12 Peters, 615, and *Kendall* v. *Stokes et al.*, 3 How., 100." (*Kentucky* v. *Dennison*, 24 How., 66, 97.)

See also *Ames* v. *Kansas ex rel. Johnston* (111 U. S., 449, 459), wherein it was held that a proceeding in *quo warranto* was a suit of a civil nature and removable from a State court.

II.

Congress has power to authorize a circuit court to issue a mandamus in an original proceeding.

This proposition is supported by the authorities:

Kendall v. *United States*, 12 Peters, 522, 617.
United States v. *Schurz*, 102 U. S., 378.
Merrill on Mandamus, section 217.
High on Extraordinary Legal Remedies, section 589.

III.

If no other statute conferred upon a circuit court jurisdiction of an original proceeding for a mandamus such jurisdiction was given in cases where the writ is necessary to enforce orders of the Interstate Commerce Commission by the act to regulate commerce, approved February 4, 1887, and the amendments thereto.

Section 20 of the act to regulate commerce authorizes the Commission to require annual reports.

Section 12 (as amended March 2, 1889, and February 10, 1891) gives the Commission authority to inquire into the management of the business of common carriers and to obtain from them full and complete information necessary to enable it to perform its duties and carry out the objects for which it was created. It further authorizes and *requires* the Commission to execute and enforce the provisions of the act; "and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute *in the proper court* and to prosecute under the direction of the Attorney-General of the United States *all necessary proceedings for the enforcement* of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States." * * *

Mandamus is the only adequate remedy known to the law by which a common carrier can be forced to report.

Common carriers have assumed public functions,

and the duties imposed upon them by statute may properly be enforced by *mandamus*.

Merrill on Mandamus, sec. 1325.

Mobile and Ohio R. R. Co. v. *Wisdom*, 5 Heiskell (Tenn.), 125.

It is manifest that the purpose of the act to regulate commerce was to secure supervision of interstate commerce by Federal authorities. Such plan can only be made reasonably effective by resort to Federal courts. It can not be concluded, therefore, that Congress intended the Commission to rely upon State courts to secure enforcement of its orders if, indeed, such courts have power to entertain applications therefor.

The circuit court of the United States for the district where the carrier is located is a proper court to exercise the jurisdiction in question. It is the Federal court having the widest general jurisdiction and the one specifically mentioned and empowered to act by other sections of the statute.

We therefore submit that Congress intended by the commerce act to confer upon a circuit court of the United States jurisdiction to entertain an original proceeding instituted by the Interstate Commerce Comsion for *mandamus* to require a railway company to make a report as directed. Such a proceeding is the only one by which it can enforce obedience to its orders, and is therefore a *necessary* one within the meaning of section 12. It is not to be assumed that Congress required enforcement of the provisions of the

act at the hands of the Commission and withheld from it the only means by which that end could be secured.

In each one of sections 6, 9, 10, 12, 16, and 22 of the commerce act specific provision is made for enforcing the right, duties, and powers given therein. No specific power is granted in section 20 for enforcing its requirements, and this leads to the conclusion that the broad provisions contained in section 12 for all *necessary proceedings* for enforcement of the act were intended to apply. It would be unreasonable to conclude that section 20 was not to be enforced because provision for enforcing other sections was made in specific terms.

It may be contended that the criminal prosecutions provided for by the act were intended to secure compliance with those sections wherein no specific remedy was given. But it is well settled that a remedy by *mandamus* is not defeated by the existence of a punitive statute. (Merrill on Mandamus, sec. 53, and cases there cited; High Ex. Leg. Rem., secs. 18, 20.) The purpose of Congress was to *secure* proper information for the use of the Commission and the public. The effective way of carrying out such purpose is not by means of a criminal prosecution. *Mandamus* is the only instrumentality which can be safely relied upon to produce the desired result.

Many petitions in original proceedings seeking writs of mandamus to compel carriers to file annual reports were presented to the Federal courts in the year 1897.

Except in two of those cases, the carriers complied with the orders before they were heard and the suits were dismissed.

United States ex rel. I. C. C. v. *Chicago, K. & S. R. R. Co.*, 81 Fed. Rep., 783.

United States ex rel. I. C. C. v. *Seaboard Ry. Co.*, 82 Fed. Rep., 563, 566; *ib.*, 85 Fed. Rep., 955.

In none of the cases so instituted was the jurisdiction of the court to entertain the proceeding called in question.

We respectfully submit that the judgment below should be reversed.

J. C. McReynolds,
Assistant Attorney-General.

L. A. Shaver,
Solicitor for the Interstate Commerce Commission.

February, 1905.

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FILE COPY.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 251.

THE UNITED STATES EX REL. MARTIN A. KNAPP, ET AL., INTERSTATE COMMERCE COMMISSIONERS, *Plaintiff in Error,*

vs.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, *Defendant in Error.*

DEFENDANT'S BRIEF.

GEORGE C. GREENE,

Defendant's Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

THE UNITED STATES EX REL. MARTIN A. KNAPP, ET AL., INTERSTATE COMMERCE COMMISSIONERS, *Plaintiff in Error,* vs. THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, *Defendant in Error.*	No. 251.

DEFENDANT'S BRIEF.

Error to Circuit Court, Northern District of Ohio, to review judgment and order dismissing petition for writ of mandamus for want of jurisdiction.

STATEMENT.

The petition states that the relators acting in their capacity as members of the Interstate Commerce Commission show:

That said Commission is a body created under the "Act to Regulate Commerce," and that under the provisions of Section 12 of that Act on the 3d day of June, 1903, it prescribed the "manner and form" in which reports made pursuant to said section should be made "and the contents thereof" and directed that each carrier subject to said Act should in each year file with the Commission a report as so prescribed;

That defendant is a common carrier subject to the provisions of said Act;

That said order was served on defendant and that defendant failed and neglected to make out and return said report for the

year ending June 30, 1903, as required by the Commission, in full, in that it failed in the report made by it to set forth the data called for on page 63*a* of the form of report prescribed by the Commission; "namely, the tonnage, ton mileage, earnings and receipts per ton mile on grain, hay, cotton, live stock, dressed meats, anthracite coal, bituminous coal and lumber, carried in carload lots."

That such data or information is necessary to enable the Commission to perform and carry out the duties for which it was created.

That there is no other adequate remedy and therefor the petitioners pray for writ of mandamus, commanding that a report setting forth the omitted matters be forthwith made. (Record, pp. 2, 3, 4.)

The defendant moved that the petition be dismissed on the ground that the Circuit Court has no original jurisdiction to issue a writ of mandamus as prayed for. (Record, p. 8.)

The motion was granted and the court made a certificate conformable to Act of Congress of March 3, 1891, Chapter 517, Section 5, "that the judgment and order of dismissal of the petition of the plaintiff herein is based solely on the ground that the cause set forth in the petition, in my opinion, is not one of which the Circuit Court of the United States has any jurisdiction; and that treating the motion to dismiss petition for writ of mandamus, filed January 28, 1904, as presenting this question of jurisdiction, and acting also independently of the motion, and on the court's own motion, the suit is dismissed only for the reason above stated; that is, that there is no jurisdiction of the Circuit Court of the United States regarding the controversy."

On the 15th day of March, 1904, judgment was entered accordingly.

The plaintiff assigns as error the granting of said motion, and rendering judgment against the plaintiff. (Record, p. 12.)

In support of the judgment of the court below, and in answer to the contention of the plaintiff in that court, I respectfully submit the following:

POINTS.

I.

A Circuit Court of the United States has no jurisdiction, under the general statute defining its jurisdiction, to issue a writ of mandamus as an original proceeding, nor at all except when necessary to the exercise of its jurisdiction.

The Revised Statutes (Section 716) provide: "The Supreme Court and the Circuit and District Courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

The proposition above stated has been declared and reiterated in many cases in this court.

In *McIntyre vs. Wood*, 7 *Cranch*, 504, an application was made to the Circuit Court for a writ of mandamus commanding a register of the land office to issue a certificate of purchase of certain lands. The application was denied. The Court said: "The power of the Circuit Courts to issue the writ of mandamus is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction."

In *Bath Co. vs. Avery*, 13 *Wall*, 244, the court said: "It must be considered as settled that the Circuit Courts of the United States are not authorized to issue writs of mandamus, unless they are necessary to the exercise of their respective jurisdictions. * * * Applying this rule to the present case, it is decisive. The relator's claim had not been brought to judgment in the Circuit Court, nor had it been put in suit. His application for a mandamus was, therefore, an original proceeding neither necessary nor ancillary to any jurisdiction which the court then had. For this reason it should have been denied, and the judgment that a peremptory mandamus should issue was erroneous."

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In *Rosenbaum vs. Bauer*, 120 *U. S.*, 450, this court said: "The Circuit Court has no jurisdiction to award a mandamus except as ancillary to some other proceeding establishing a demand, and reducing it to a judgment, the mandamus being in the nature of process for executing the judgment."

It is deemed unnecessary to refer to the numerous other cases to the same effect.

In the Court below the only case cited by plaintiff in support of the jurisdiction was the case of *United States vs. Kendall*, 12 *Peters*, 608, but that case was brought in the Circuit Court of the District of Columbia, and this court, at page 615, said: "Unless the Circuit Court in the District of Columbia has larger powers in this respect (than the Circuit Courts of the United States) it has not authority to issue a mandamus in the present case."

II.

Jurisdiction has not been conferred upon the Circuit Court by the Act to Regulate Commerce to issue the writ of mandamus applied for in this case.

First.—Upon the argument in the court below it was contended by the counsel for the plaintiff that Section 12 of the Act to Regulate Commerce conferred such power.

In answer to such contention, I submit that that section confers no jurisdiction whatever upon the Circuit Court to issue a writ of mandamus in any case. It merely authorizes the Commission to do certain things, among which is to obtain from carriers information necessary to enable the Commission to perform the duties and carry out the objects for which it was created, and it specifies the means and method by which it may obtain such information, to wit: by requiring by subpoena the attendance and testimony of witnesses and the production of all books and papers, tariffs, contracts and documents. It also authorizes the Circuit Court to order the attendance of the carrier and of witnesses before the Commission.

The method of procurement of information by the Commission is clearly defined in Section 12 and it confers no authority upon the Commission to require or compel a carrier to expend its time, labor and money in preparing and laying before the Commission reports, statements, tables or computations upon subjects upon which the Commission may deem it necessary to have information.

Under that section it may only obtain such information by examination of witnesses and inspection of books and documents or depositions taken as is provided in that section.

The same section also provides that "upon the request of the Commission, it shall be the duty of any District Attorney of the United States to whom the Commission may apply, to institute in the *proper court* and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of this act and for the punishment of all violations thereof."

This provision, the plaintiffs contended, confers upon the Circuit Court jurisdiction to issue the writ of mandamus in this case and in all cases for the enforcement of any of the provisions of the act.

If this contention be true, then, I ask, why was it expressly provided in Section 6 of the same act, and in the new section added March 2, 1899, that *in the cases therein specified* the Circuit Courts should have jurisdiction to issue a writ of mandamus.

If the above provisions of Section 12 have the force and effect claimed by plaintiff, then such special provisions were entirely unnecessary.

Section 12 confers no jurisdiction upon any court. It merely declares the duty of district attorneys. It requires them to institute in the *proper court* all necessary proceedings for the enforcement of the act. The "necessary proceedings" intended were such proceedings as were authorized and in accordance with existing law, and they were be instituted in the *proper courts; i. e.*, courts having jurisdiction to entertain them. Counsel for plain-

tiff contented that "if the words 'necessary proceedings' do not embrace mandamus because it is not expressly named, then they do not embrace injunction or 'mandatory injunction.'"

We do not contend that the words "necessary proceedings" may not in some cases embrace mandamus, but our contention is that only in cases where jurisdiction is expressly conferred upon the Circuit Court has it jurisdiction to issue the writ, and in cases where it is not so expressly conferred, the Circuit Court is not the *proper court* in which the district attorney may institute proceedings therefor.

It is conceded that Section 12 makes it the duty of the district attorney, upon the request of the Commission, to apply to the Circuit Court for writ of mandamus under Section 6 to compel compliance with the provisions of that section at the relation of the Commissioners, because jurisdiction is expressly given to the Circuit Court to grant the writ in the case therein specified. There are many other proceedings which the district attorney may institute for the enforcement of the act in the proper courts upon the request of the Commission.

In plaintiff's brief in the court below it was said that:

> "What is the 'proper court' may be gathered from other sections of the act. In Section 6 the Courts designated for the enforcement of the provisions of that section are 'any circuit court,'" etc.

The following is the material portion of Section 6:

> "If any common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any Circuit Court of the United States * * * to compel compliance with the aforesaid provisions of this section."

Instead of Section 6 tending to show that it was intended to grant jurisdiction to the Circuit Court to enforce all the provi-

sions of the act by writ of mandamus, it shows clearly that such was not the intention, but that the jurisdiction granted was limited and only extended to cases for the enforcement of certain specified provisions of Section 6.

So also as to the other provisions of the Act, referred to by the plaintiff, which authorize certain suits and prosecutions in district and circuit courts. These specific provisions clearly show that the jurisdiction of the courts was intended to be extended to embrace only the specific cases mentioned and that it was not understood or intended that the provision in Section 12, which imposed a duty upon district attorneys, extended the jurisdiction of the Circuit Courts.

Second.—Again, it was contended that Section 16 of said Act confers jurisdiction to issue the writ, and in the plaintiff's brief it was said: "Section 16 provides that whenever 'any lawful order or requirement of the Commission' has been violated or disobeyed, it shall be lawful for the Circuit Courts of the United States 'to issue a writ of injunction or other proper process mandatory or otherwise' to prevent the continuance of such violation or disobedience."

In answer to this I contend that Section 16 has no relation or application to this case. That section authorizes the Commission, or any person interested in any order or requirement of the Commission, not founded upon a controversy requiring a trial by jury, which has not been obeyed or has been violated, to apply by "petition to the Circuit Court of the United States *sitting in equity*," and provides that the court "shall proceed to hear and determine the matter speedily as a court of equity," etc.

It also provides that "on such hearing the findings of fact in the report of the Commission shall be *prima facie* evidence of the matters therein stated."

It is clearly apparent that the orders and requirements to be enforced under the provisions of Section 16 are those which are made by the Commission after investigation, and hearing of complaints as provided in Sections 13, 14 and 15.

It is equally clear that section has no application here.

This case is not an application to the Circuit Court sitting in equity. Nor is it an application by the Commission or person interested in the order.

It is a suit at law in which the United States is party plaintiff.

III.

The Judgment and Order of the Circuit Court should be affirmed.

GEORGE C. GREENE,

Counsel for Defendant in Error.

Buffalo, February 1, 1905.

FILE COPY.

FILED
FEB 23 1905
JAMES H. McKENNEY,
Clerk.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

THE UNITED STATES EX REL. KNAPP ET AL.,
Plaintiff in Error,
vs.
THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,
Defendant in Error.

No. 251.

SUPPLEMENT TO DEFENDANT'S BRIEF.

The first point now here made in the plaintiff's brief was not made or raised in the court below, and I beg leave to submit the following answer thereto. The point now made is that "under the act of March 3, 1887 (24 Stat., 552) and other similar acts passed prior thereto, a Circuit Court has jurisdiction of an original proceeding seeking relief by mandamus."

The plaintiff's counsel concedes that "this proposition is undoubtedly out of harmony with the opinions of this Court in a number of cases arising under the judiciary act of 1789 (1 Stat., 73) and the act of 1875 (18 Stat., 470)," but suggests that the public interests would be advanced if this Court would refuse to be bound by such decisions.

From the time of the decision of this Court in the year 1813, in the case of *McIntyre vs. Wood*, 7 Cranch, 504, there is an unbroken line of decisions in this Court, the Circuit Courts, and the Circuit Courts of Appeals, running down to the present time, numbering a hundred or more, in which it is held that "the power of the Circuit Courts to issue writs of *mandamus* is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction."

Among the leading cases in this Court since the law of 1875 was enacted is that of *Rosenbaum vs. Bauer*, (120 *U. S.*, 450), decided in 1887. In that case it was contended, as here, that under the act of March 3, 1875, the Circuit Courts had power to issue the writ in an original proceeding, but this Court held adversely to such contention and sustained the ruling of the Circuit Court which proceeded on these grounds:

> "1. That it had always been held by this Court that the Circuit Courts had no jurisdiction to award a *mandamus* except as ancillary to some other proceeding establishing a demand and reducing it to judgment, the *mandamus* being in the nature of process for executing the judgment.
>
> 2. That a proceeding for a *mandamus was not a suit of a civil nature*, within the meaning of any provision of the Act of March 3, 1875, *Chap.* 137, 18 *Stat. at L.* 470, and was not removable under it."

This Court said:

> "Prior to the Act of 1875, it was well settled that the Circuit Courts had no jurisdiction to issue a writ of *mandamus* in a case like the present."

The Court then, after referring to the case of *McIntyre vs. Wood*, *Bath County vs. Amy* and other cases, and quoting therefrom said:

> "The same principles have been asserted by this Court in cases arising since the Act of March 3, 1875, as in *County of Green vs. Daniel*, 102 *U. S.*, 187-195; *in U. S. vs. Schurz*, 102 *U. S.*, 378, 393; *in Davenport vs. County of Dodge*, 105 *U. S.*, 237, and in *Louisiana vs. Samuel*, 107 *U. S.*, 711, 727."

The 1st Section of the Judiciary Act of 1887, corrected by the Act of 1888, (25 Stat. at Large 433, Chap. 866), amends the 1st section of the Act of 1875, by changing the amount of the sum in dispute from $500 to $2,000, but in no respect changed the law so far as the questions here involved are concerned. So that, what was the law under the Act of 1875, as declared by this Court in *Rosenbaum vs. Bauer*, as above stated, is the law today.

Among the recent cases upon the question here involved, I beg leave to refer to the following:

In *State of Indiana vs. L. E. & W. Ry. Co.*, 85 *Fed. R. I.*, 3, decided February 23, 1898, Baker, J.

The plaintiff moved to remand the case to the State Court for the reasons:

"1. That it is not a suit of a civil nature, at law or in equity, within the meaning of the act of Congress defining the jurisdiction of the Circuit Court.

"2. That it is a proceeding, the sole object of which is to secure the issuance of a writ of mandamus against the defendant as an original writ and not as ancillary to, or in aid of any jurisdiction heretofore acquired by thisCourt."

The Court, after reviewing the history of the writ of mandamus, says:

"The construction placed upon the first clause of Section 14, of the Judidiciary Act of September, 1789, continues in force in Section 716, Revised Statutes, 1878, denies authority to the Circuit Courts of the United States to issue writs of mandamus except as ancillary to, or in aid of a pre-existing jurisdiction; and, it has been held that the present acts of Congress defining the jurisdiction of those courts have not enlarged their jurisdiction in respect to writs of mandamus.

"A proceeding for an original writ of mandamus, commenced in a State Court, *is not a suit of a civil nature* at law or in equity, within the meaning of the act of March 3, 1887, or of the act of August 13, 1888, for the re-enrolment of the former act; and therefore it is not removable under the provisions of those acts from a State Court into the Circuit Court of the United States."

The Court cites numerous cases in support of its decision, among which is of *Fuller vs. Aylesworth*, in the Circuit Court of Appeals, 6th Circuit, decided in 1896, 75 Fed. Rep, 694, in which, after reviewing authorities the, Court says, p. 699: "It follows that the writ of mandamus in the Circuit Courts is never an independent writ, as it is in many States and England, but it

is only a proceeding ancillary to the judgment which gives the jurisdiction, and when issued becomes a substitute for the ordinary process of execution to enforce the judgment of the same."

Citing *Riggs vs. Johnson County*, 6 *Wallan*, 166, 168 and other cases.

That Congress did not understand that it had conferred jurisdiction generally upon the Circuit Courts to issue writs of mandamus is shown by its enactments specially authorizing them to do so in certain specified cases.

The third section of the Act of Congress, of August 7, 1888, in relation to construction of railroad and telegraph from Marion River to the Pacific, the Interstate Commerce Commission was authorized to enforce its certain order by writ of mandamus, in the courts of the United States, in the name of the United States, at the relation of either of the Commissioners.

Again, March 2, 1889, a "new section" or supplement was added to the Act to Regulate Commerce, which provided that the Circuit and District Courts of the United States shall have jurisdiction upon the relation of any person alleging such violation by a common carrier of any of the provisions of said Act as prevents the relator from having interstate traffic moved upon rates or terms as favorable as those given to other shippers, to issue a writ or writs of mandamus against such carrier.

Section 6 (as before noted) of the Act to Regulate Commerce also authorizes the Circuit Courts to issue writ of mandamus in case there specified.

IN CONCLUSION I respectfully submit that the public interest would not be advanced by this Court's refusing to be bound by its decisions as suggested. If the "modern development of proceeding by mandamus, and the very great importance of the remedy thereby" requires that the jurisdiction of the Circuit Courts be extended, the Interstate Commerce Commission should apply to the Congress instead of to this Court for legislation in that behalf.

GEORGE C. GREENE,

Counsel for Defendant.

Supreme Court of the United States.

No. 251.—October Term, 1904.

The United States ex rel. Martin A. Knapp, Judson C. Clements, James D. Yoemans, Charles A. Prouty, and Joseph W. Fifer, Interstate Commerce Commissioners, Plaintiffs in Error, vs. The Lake Shore and Michigan Southern Railway Company.	In error to the Circuit Court of the United States for the Northern District of Ohio.

[April 10, 1905.]

Mr. Justice McKenna delivered the opinion of the Court.

Petition for mandamus filed in the Circuit Court of the United States for the Northern District of Ohio by the Interstate Commerce Commissioners against the Lake Shore and Michigan Southern Railway Company. The railway company moved to dismiss the petition on the ground that the court had no original jurisdiction to issue a writ of mandamus. The motion was granted and the writ dismissed. A certificate was duly made showing that a question of jurisdiction was in issue, and recites that the court acted not only on the motion of the railroad but on its own motion in dismissing the petition for want of jurisdiction.

The petition alleges that the railroad company is a corporation created by the laws of the States of New York, Pennsylvania, Ohio, Michigan, Indiana and Illinois, and has its principal place of business in the State of Ohio, and is a common carrier engaged in interstate commerce, and as such is subject to the provisions of the act of Congress to regulate commerce.

That under section 20 of said act the Interstate Commerce Commission is authorized to require any common carrier subject to the act to make reports of certain matters and things, and in pursuance thereof the commission made an order on the 3d of June, 1903, prescribing the manner and form in which said reports should be made and the contents thereof, and directed each common carrier to file the same on or before the 15th. A copy of the order was served on the railroad company, but the company failed and neglected to make out and return a report in full, in that it failed to set forth in the report made and returned by it the data or information called for, namely, "the tonnage, ton—mileage, earnings and receipts per ton per mile on grain, hay, cotton, live stock, dressed meats anthracite coal, bituminous coal, and lumber carried in carload lots;

and that said data or information required by the commission to be given in said report by respondent is necessary to enable the commission to perform the duties and carry out the objects for which it was created, in the interest of the public, and that promptness by carriers in furnishing the same on or before the 15th day of September of each year, as required by the commission, is essential for the purpose, among others, of enabling the commission to make a full and complete annual report to Congress, which, by section 21 of said act to regulate commerce, is required to be transmitted to said body on or before December 1st of each year."

It is also alleged that there is no adequate remedy except that afforded by mandamus.

It is admitted that under the Judiciary Act of 1789, (1 Stat. 73,) and the act of 1875, as construed by this court, a Circuit Court of the United States has no jurisdiction of an original proceeding seeking relief by mandamus. And counsel, not to minimize the admission, quotes the cases in which that has been laid down and the text books which have expressed the doctrine as settled. But, it is suggested, that under the act of 1887, (24 Stat. 552,) a different ruling should be made. No change in language is pointed out which would justify such change in ruling, but we are urged to that radical course in view of the modern development of proceedings by mandamus, and the very great importance of the remedy thereby. We are not impressed by the invocation. We are unable to understand how language conferring jurisdiction on a court can take a new meaning from the circumstances suggested. Difference in remedies is conspicuous in our jurisprudence, and some remedies are of that nature that they can be enforced only under exceptional circumstances and under special grants of power. Of this kind is mandamus, and if Congress had intended by the act of 1887 to confer power on the Circuit Courts to issue mandamus in an original proceeding Congress would not have employed the language which had been construed from the foundation of the Government not to give such jurisdiction. We adhere, therefore, to the prior cases.

2. Congress has undoubtedly power to authorize a Circuit Court to issue a mandamus in an original proceeding. (*Kendall* v. *United States*, 12 Pet. 322; *United States* v. *Schurz*, 102 U. S. 378.) But has Congress done so, as contended, by sections 12 and 20 of the Interstate Commerce Act as amended? Under section 12 the commission is given the authority to inquire into the management of the business of common carriers subject to the act, and have the right to obtain from the carriers full and complete information to enable it to perform its duties. It is also authorized to enforce the provisions of the act. By section 20 the commission may require annual reports and fix the time and prescribe the manner in, which such reports shall be made. And it is made the duty of any district attorney of the United States, to whom the commission may apply, to

institute in the proper court and to prosecute under the direction of the Attorney General all necessary proceedings for the enforcement of the provisions of this act. It is hence contended that the power of the commission to require the report stated in the petition is undoubted, and having power to order the report to be made the commission has the power to enforce obedience to the order.

But in what way? Manifestly only in such way as the courts have jurisdiction to give. All powers are given in view of that jurisdiction, and the amendments of the Interstate Commerce Act are so framed. Jurisdiction to issue mandamus is conferred by section 6, to enforce the filing or publishing by a common carrier of its schedules or tariffs of rates, fares and charges. And such jurisdiction is also given to the Circuit Courts and District Courts upon the relation of any person or persons, firm or corporation, alleging a violation of any of the provisions of the act which prevents the relator from having interstate traffic moved on terms as favorable as any other shipper. The remedy is expressly made cumulative of the other remedies provided by the act. It is clear, therefore, when Congress intended to give the power to issue mandamus it expressed that intention explicitly. Such power cannot be inferred from the grant of authority to the commission to enforce the act or from the direction to district attorneys or the Attorney General to institute "all necessary proceedings for the enforcement of the provisions" of the act (section 12). The proceedings meant are, as we have said, those within the jurisdiction of the court. And special remedies are given. For instance, by section 16 a summary proceeding in equity is authorized, and the form of the ultimate order of the court may be that of a "writ of injunction or other proper process, mandatory or otherwise."

Without attempting now to define the extent of that section, we may say, it seems adequate to enable the commission to enforce any order it is authorized to make.

Judgment affirmed.

Mr. Justice HARLAN dissented.

True copy.

Test:

Clerk Supreme Court, U. S.